Vol. IX

TRANSCRIPT OF RECORD

(Pages 3661 to 3695)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 26, 1945.
APRIL 23, 1945.

CERTIORARI GRANTED APRIL 23, 1945.

Office - Supreme Court, U. S.
FILED
MAR 26 1945
CHARLES ELMORE CROPLEY
CLERK

No. 1080

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

Volume IX—Pages 3661 to 3694

(Proceedings since the hearing on April 6 and 7, 1944, on exceptions to the Master's report)

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United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

Nos. 5648, 5546 October Term, 1943

UNIVERSAL OIL PRODUCTS COMPANY

v.

ROOT REFINING COMPANY

Appellant

ORDER

Present: BIGGS, MARIS, JONES, GOODRICH, MCLAUGHLIN, *Circuit Judges.*

This Court on November 26, 1941 having appointed Thomas Raeburn White, Esquire, Special Master with authority to examine, investigate and to make and report to this Court his findings and conclusions concerning the relationship and dealings, if any, between Universal Oil Products Company, the plaintiff-appellee above named, Morgan S. Kaufman, and former Circuit Judge J. Warren Davis, and any and all persons acting for or on behalf of any of them in connection with the above entitled causes and the entire subject matter of the prosecution and disposition of the said causes, and in particular whether there was in connection therewith such fraud, corruption, obstruction or distortion of justice as tainted and invalidated the judgments

rendered by this Court in the above entitled causes on June 26, 1935; and

The Special Master having filed his report on October 19, 1943 to which exceptions were filed by both appellee and amici curiae; and

The exceptions having been fully argued by counsel and the Court having examined the evidence taken by the Special Master;

Upon consideration thereof the Court hereby dismisses the exceptions and adopts the findings of fact and conclusions of law of the Special Master as the findings of fact and conclusions of law of the Court.

And it is ordered that the judgments of this Court in the above entitled causes entered on June 26, 1935 be and the same are hereby vacated and that the mandates issued on October 30, 1935 to the District Court be recalled. The Clerk is directed thereupon to restore the causes to the argument list for reargument.

By the Court

JOHN BIGGS, JR.
Circuit Judge.

June 15, 1944.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 5546 and 5648

ROOT REFINING COMPANY,

Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,

Plaintiff-Appellee.

MOTION

Now come J. Bernhard Thiess and Thorley von Holst, *Amici Curiae*, and move this Honorable Court for an Order directing:

1. That the expenses and compensation of Thomas Raeburn White, Special Master, acting under the Order of this Court entered November 26, 1941, paid by the *Amici Curiae* in the first instance and allowed to the Master by the Order of this Court entered December 14, 1943, be taxed against Universal Oil Products Company and in favor of said *Amici Curiae* in the amount of $28,481.91.

2. That the costs and disbursements paid by the said *Amici Curiae* during the course of the investiga-

tion by the Master under the Order of November 26, 1941, be taxed against Universal Oil Products Company and in favor of said *Amici Curiae* in the amount of $15,488.20.

3. That the other and additional expenses incurred by the *Amici Curiae* during the course of the said investigation be taxed against Universal Oil Products Company and in favor of said *Amici Curiae* in the amount of $11,997.87, or such part thereof as the Court may deem proper.

4. That a reasonable attorney's fee on account of the services of the said *Amici Curiae* and of counsel associated with them during the course of the said investigation be taxed against Universal Oil Products Company and in favor of said *Amici Curiae*.

5. That the Court set a day certain for the hearing of this Motion.

In support hereof *Amici Curiae* present herewith and attach hereto the following verified exhibits:

EXHIBIT A—A statement of expenses and compensation of Thomas Raeburn White, Special Master, paid by *Amici Curiae*.

EXHIBIT B—A statement of the costs and disbursements paid by *Amici Curiae* during the course of the investigation of a character customarily taxed as costs.

EXHIBIT C—A statement of the expenses of *Amici Curiae* incurred and paid during the course of the

investigation in addition to those items embraced in Exhibits A and B.

EXHIBIT D—A statement of the days and hours of work devoted by each of *Amici Curiae* and by counsel associated with them in preparation for and participation in the investigation and in the briefing and argument thereof before the Master and before this Court.

J. BERNHARD THIESS
THORLEY VON HOLST
Amici Curiae

EXHIBIT A

Statement of Expenses and Compensation of Thomas Raeburn White, Special Master, Paid by *Amici Curiae*

1. Compensation for services allowed by Order of this Court December 14, 1943	$25,000.00	
2. Disbursements allowed by Order of this Court December 14, 1943	3,495.91	
	$28,495.91	
Less credit for subsequent receipts by the Master	14.00	
		$28,481.91

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

ROBERT W. POORE, being first duly sworn, deposes and says that the foregoing items constitute a true and correct statement of the amounts paid to Thomas Raeburn White, by J. Bernhard Thiess and Thorley von Holst, *Amici Curiae*, pursuant to Order of the Court of Appeals for the Third Circuit, entered December 14, 1943.

ROBERT W. POORE

SUBSCRIBED and SWORN to before me this 24th day of July, 1944.

ANNE E. RYAN
Notary Public

My commission expires May 15, 1947

[NOTARIAL SEAL]

EXHIBIT B

Costs and Disbursements Paid by *Amici Curiae*

1. Reporters' Fees		
Transcript of court hearing on June 5, 1941	$ 104.70	
2 transcripts of proceedings before the Master from December 11, 1941, to August 2, 1943	623.32	
2 transcripts of proceedings before the Master from Sept. 9, 1942, to April 2, 1943	2,897.04	
Transcript of oral argument before Court of Appeals	384.90	4,009.96
2. Cost of Printing		
One-half the cost of printing 50 copies of record for filing with the Court	3,781.53	
Petition and Brief of *Amici Curiae* before Court of Appeals	53.10	
Reply memorandum before Court of Appeals	63.35	
Brief and Supplement before Master	566.40	
Reply Brief before Master	294.50	
Brief before Court of Appeals	1,701.35	
Chronology and Index	209.39	6,669.62
		10,679.58

Carried forward		$10,679.58
3. Copies of documents necessarily obtained for purposes of the investigation		
Transcript of United States vs. Davis, Kaufman and Fox (first trial)	$ 948.19	
Transcript of United States vs. Davis, Kaufman and Fox (second trial)	1,631.50	
Transcript of proceedings in In re Kaufman (disciplinary proceedings)	826.00	
Transcript of Grand Jury proceedings introduced during In re Kaufman	259.50	
Copy of Master's Report in In re Kaufman	76.48	3,741.67
4. Witness fees paid by *Amici Curiae* comprising per diem $2.00 per day, subsistence $3.00 per day, and travel at 5 cents per mile:		
Marguerite H. Asselin	15.00	
William Elmer Brown	7.50	
Eunice M. Cole	120.00	
J. Warren Davis (subpoenaed twice)	41.00	
W. L. Duncan	119.50	
W. C. Herrell	93.50	
Morgan Kaufman (subpoenaed twice)	63.00	
Thorne Lord	10.00	
Mary Mahoney	7.50	
W. L. Rogers	120.00	
Alma H. Steedle	10.00	
Hiram Steelman	7.50	
Charles L. Stokley (subpoenaed twice)	239.00	
Wilmer C. Stokley	115.25	968.75
		$15,390.00

Carried forward		$15,390.00
5. Paid for Exhibits Introduced Before the Master by *Amici Curiae*		
Exhibits 33 and 34	8.00	
Exhibits 40-55, inc.	36.50	
Exhibits 77 and 78	3.10	
Exhibits 107 and 108	4.00	
Exhibits 127-132, inc.	11.50	
Exhibits 137-141, inc.	10.00	
Exhibits 199 and 199A	17.60	
Exhibits 215A-215E	7.50	98.20
		$15,488.20

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

ROBERT W. POORE, being first duly sworn, deposes and says that the foregoing items truly and correctly state the disbursements paid by J. Bernhard Thiess and Thorley von Holst, *Amici Curiae*, on account of expenses, incurred during the course of the investigation ordered by the Court of Appeals for the Third Circuit on November 26, 1941, which in the opinion of affiant are normally and properly taxable as costs.

ROBERT W. POORE

SUBSCRIBED and SWORN to before me this 24th day of July, 1944.

ANNE E. RYAN
Notary Public
My commission expires May 15, 1947

[NOTARIAL SEAL]

EXHIBIT C

Additional Expenses and Disbursements of *Amici Curiae* not Included in Exhibits A and B

MAY, 1941			
Services of associate in investigating and reporting on proceedings in U. S. v. Davis et al.		$ 20.00	
Expenses of trip to Philadelphia	JBT	177.60	
Expenses of trips to Philadelphia and New York re Davis trial and proceedings before C. C. A. 3 relative thereto	TvH	428.05	
			$ 625.65
JUNE, 1941			
Proportionate share of expenses of trip to Philadelphia	JBT	61.80	
Expenses of Judge Denison on trips to Chicago and Philadelphia		130.56	
			192.36
AUGUST, 1941			
Expenses of trip to Philadelphia on attendance at Judge Davis's criminal trial	JBT TvH	248.80 269.60	
Services of Philadelphia associate in consulting Circuit Court of Appeals dockets and files as to appearance of Morgan S. Kaufman as counsel in certain cases		25.00	
			543.40
DECEMBER, 1941			
Expenses of trip to Washington and Philadelphia on investigation and first hearing	JBT TvH	132.45 150.84	
Expenses of Judge Denison on trips to Chicago and Philadelphia		96.18	
			379.47

JANUARY, 1942			
Expenses of trip to Philadelphia to attend Kaufman disciplinary proceedings and to examine papers in Master White's office	SN	158.00	
Expenses of trip to Philadelphia on hearing before Master White	TvH	135.79	
Expenses of trip to Philadelphia and New York	JBT	170.00	
			$ 463.79
MARCH, 1942			
Expenses of trip to Philadelphia and attending at Master's office to examine records	JBT	135.12	
	SN	119.25	
To W. H. Mitchell, Clerk of U. S. District Court: Certification of docket entries in Tri-Ergon cases		5.15	
			259.52
APRIL, 1942			
Expenses of trip to Orlando, Tavares and Mt. Dora, Florida, on investigation of title to Stokley's Florida properties	RWP	163.92	
Expenses of trip to Philadelphia	TvH	103.25	
	SN	96.05	
Expenses of trip to Philadelphia and New York	JBT	134.05	
Services of Washington associate in obtaining certified copy of telegram sent by Clerk of Supreme Court to Thomas G. Haight concerning denial of Certiorari in Supreme Court cases Nos. 417-418		17.80	
			515.07

MAY, 1942			
Expenses of trip to Philadelphia...	JBT	161.01	
	SN	137.50	
	RWP	116.68	
Expenses of trip to Mt. Dora, Miami, Orlando, Eustis and Tavares, Florida to interview prospective witnesses Duncan and Herrell ..	SN	230.84	
	RWP	186.48	
Expenses of trip to Cleveland to interview prospective witnesses....	JBT	43.25	
To cost of plat of Kaufman and Davis properties in Mt. Dora....		15.00	
			890.76
JUNE, 1942			
Expenses of trip to New York and Wilmington interviewing prospective witnesses	JBT	139.66	
Services of New York associate on obtaining service of subpoenas...		50.00	
			189.66
JULY, 1942			
Expenses of W. L. Duncan in connection with Stokley's Florida property		25.00	25.00
AUGUST, 1942			
Expenses of trip to Battle Creek, Mich. to interview Herrell, including cost of photostats obtained...	RWP	61.69	
Stenographic services in typing testimony		424.82	
			486.51

SEPTEMBER, 1942			
Expenses trip to Philadelphia interviewing Judge Thompson	JBT	173.67	
Expenses trip to Philadelphia on hearing	JBT	211.01	
	TvH	135.79	
	SN	121.01	
	RWP	122.59	
Services of W. L. Duncan in Philadelphia		75.00	
Expenses of W. C. Herrell at Philadelphia		34.55	
Expenses and transportation for Ira. Rubel, accountant, and JBT—trip to New York on investigation of Ungerleider's books, etc.	JBT	285.78	
Services of New York associate in locating and serving subpoenas on Lord and Ungerleider		50.00	
Cost of photostats of Stokley's deeds and other documents		80.60	
			1,290.00
OCTOBER, 1942			
To U. S. Marshal, Jacksonville, Fla.—Cost serving subpoenas		25.00	
Services and disbursements of associate in Orlando, Fla. re subpoena on Charles L. Stokley		14.73	
Stenographic services in typing testimony		87.65	
Expenses of trip to Philadelphia on hearing	JBT	329.01	
	TvH	340.79	
	RWP	274.54	
	SN	266.80	
			1,338.52

NOVEMBER, 1942			
Services and disbursements of Orlando associate in obtaining hospital record of Stokley's son		12.24	
Services and disbursements of Washington associate in obtaining service of subpoena on Lt. Prevost		29.82	
Services and disbursements of New Orleans associate in connection with Ungerleider's records		130.90	
Services and expenses of William Elmer Brown		46.24	
Services of Philadelphia associate		25.00	
Expenses trip to Philadelphia on presentation of petition to take Fox's testimony	JBT	167.26	
	SN	135.26	
Expenses of trip to Philadelphia on hearing	JBT	138.79	
	TvH	108.79	
Expenses and services of New York associate in obtaining service of subpoenas in Trenton and Scranton		62.05	
			856.35
DECEMBER, 1942			
Services of accountants in examining brokerage accounts of J. Warren Davis, Marguerite Davis and Morgan S. Kaufman		137.86	
To Herbert J. Walter, handwriting expert: Consultation on authenticity of Universal's voucher records		25.00	
Stenographic services in copying testimony		273.85	
			436.71

JANUARY, 1943			
Services and expenses of Washington associate		35.75	
Expenses of trip to New York to examine U. S. Attorney's files	SN	134.00	
			169.75
FEBRUARY, 1943			
Services of New York associate re Charles L. Stokley		100.00	
Cost of photostats of additional papers in U. S. Attorney's Office		36.07	
			136.07
MARCH, 1943			
Services and disbursements of Orlando associate		9.71	
Expenses trip to Philadelphia for hearings	TvH	353.97	
	RWP	130.76	
Edwin H. Fearon, handwriting expert; consultation as to authenticity of Davis's account book		40.43	
Expenses trip to Philadelphia for examination of Stokley documents	RWP	113.67	
Cost of additional photostats of Stokley papers		11.42	
Services and disbursements of Philadelphia associate		29.06	
Services and expenses of New York associate in obtaining service of subpoenas on Kaufman and Davis		70.48	
Services and disbursements of Miami associate in obtaining service of subpoena on Wilmer Stokley		225.00	
			984.50

APRIL, 1943			
Expenses trip to Philadelphia on hearing	JBT	128.97	
	TvH	109.82	
	RWP	99.90	
Court reporter—For copy of argument in *In Re Kaufman*		334.58	
Stenographic services in typing evidence		78.50	
			751.77
NOVEMBER, 1943			
Expenses of trip to Philadelphia to attend hearing before Court of Appeals	TvH	162.53	
	RWP	143.66	
To Philadelphia associate for professional services and expenses		57.07	
Stenographic services in checking record		331.50	
			694.76
FEBRUARY, 1944			
Draftsman's services preparing chart for brief		12.00	
Miscellaneous expenses incurred in preparation of brief		67.60	
			79.60
APRIL, 1944			
Expenses of trip to Philadelphia on argument before Court of Appeals	JBT	185.82	
	TvH	170.44	
	SN	167.44	
	RWP	164.95	
			688.65
TOTAL			$11,997.87

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

ROBERT W. POORE, being first duly sworn, deposes and says that the foregoing items truly and correctly state the additional expenses and disbursements, not included in the items shown by Exhibits A and B, necessarily incurred and paid by Arthur C. Denison, J. Bernhard Thiess, and Thorley von Holst, *Amici Curiae*, prelinfinary to, and during the course of, the investigation ordered by the Court of Appeals for the Third Circuit on November 26, 1941.

ROBERT W. POORE

SUBSCRIBED and SWORN to before me this 24th day of July, 1944.

ANNE E. RYAN

[NOTARIAL SEAL]

EXHIBIT D

Statement of Days and Hours of Services of *Amici Curiae* and Associated Counsel

1. Arthur C. Denison

		Days
1941	May and June	9
	July	½
	September, October, and November	1
	December	2
	Total	12½ Days

2. J. Bernhard Thiess

		Hours
1941	May	52
	June	25
	July	12
	August	84½
	September	2½
	November	9
	December	48
1942	January	46
	February	25
	March	18
	April	67
	May	136
	June	148½
	July	94½
	August	75½
	September	119
	October	161½
	November	195
	December	81½

1943	February	12
	March	95½
	April	63
	May	43½
	June	4
	July	70
	August	46½
	October	30
	November	12½
	December	21½
1944	January	73
	February	150½
	March	115
	April	91
	Total	2,258½

3. Thorley von Holst

1941	May	78
	June	86
	July	59
	August	48
	November	7
	December	34
1942	January	53
	February	50½
	March	13
	April	38
	May	67
	June	106½
	July	80
	August	63
	September	53½
	October	181
	November	162
	December	154

1943	February	25
	March	182½
	April	132
	May	43
	June	12
	July	115
	August	103
	October	58
	November	91
	December	89
1944	January	215½
	February	216
	March	88½
	April	98½
	Total	2,802½

4. Sidney Neuman

1941	April	1½
	May	8
	June	45
	July	22
	November	2
	December	14
1942	January	51
	February	24
	March	73
	April	130
	May	138
	June	111
	July	83½
	August	19
	September	56
	October	171
	November	165
	December	149

1943	January	19
	February	2
	March	78
	April	94
	May	70
	June	5
	July	114
	August	91
	October	36
1944	January	199
	February	156½
	March	114½
	April	88
	Total	2,330

5. Robert W. Poore

1941	June	55½
	July	3½
	November	1
1942	March	21½
	April	56½
	May	139½
	June	120½
	July	109½
	August	101½
	September	62½
	October	176½
	November	137½
	December	40½

1943	January	4
	February	49½
	March	163½
	April	136
	May	71½
	June	3½
	July	99½
	August	74½
	October	59
	November	92½
	December	11
1944	January	173
	February	139½
	March	49½
	April	71
	Total	2,223½
	TOTAL HOURS	9,614½

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

ROBERT W. POORE, being first duly sworn, deposes and says that the foregoing exhibit truly and correctly states the days expended by Arthur C. Denison and the hours expended by J. Bernhard Thiess and Thorley von Holst, Amici Curiae, and by Sidney Neuman and Robert W. Poore, attorneys associated with them, in connection with the preparation for and participation in the investigation ordered by the Court of Appeals for the Third Circuit on November 26, 1941, and in the briefing and argument thereof before the Master and before the said Court, as shown by the books and records of the said *Amici Curiae*.

ROBERT W. POORE

SUBSCRIBED and SWORN to before me this 24th day of July, 1944.

ANNE E. RYAN
Notary Public
My commission expires May 15, 1947

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

AFFIDAVIT OF SERVICE

I, ANNE E. RYAN, being duly sworn, depose and say that I am secretary to J. BERNHARD THIESS, attorney at law, with offices at 77 West Washington street, City of Chicago, State of Illinois, and that on the 24th day of July, 1944, at or about 5:30 o'clock P. M., I deposited in the United States mail at the Post Office at Chicago, Illinois, with postage prepaid, envelopes addressed, respectively to—

Ralph S. Harris, Esq.,
100 Broadway
New York 5, New York

and

Robert F. McCracken, Esq.,
1421 Chestnut street
Philadelphia 2, Pa.,

attorneys for the Universal Oil Products Company, each containing a copy of the attached and foregoing Motion and Exhibits "A" to "D", inclusive.

ANNE E. RYAN

SUBSCRIBED and SWORN TO
before me this 24th day
of July, 1944.

EILEEN M. BRUCZYK
Notary Public
My Commission Expires June 27, 1945

[NOTARIAL SEAL]

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

Nos. 5546 and 5648.

ROOT REFINING COMPANY,

Defendant-Appellant,

v.

UNIVERSAL OIL PRODUCTS COMPANY,

Plaintiff-Appellee.

Before BIGGS, MARIS, JONES, GOODRICH and MCLAUGHLIN, *Circuit Judges.*

OPINION OF THE COURT.

(Filed December 29, 1944.)

BIGGS, *Circuit Judge.*

The proponents of the motion *sub judice* ask this court to award them reasonable counsel fees for services rendered as *amici curiæ* performed at our direction and also seek reimbursement for out-of-pocket expenses. The fees sought are to compensate the movants and the estate of former Judge Arthur C. Denison.[1] The *amici* appeared in

[1] Judge Denison died after the commencement of the proceedings referred to in this opinion.

open court, notice having been given to both the plaintiff and the defendant, and suggested that our judgments in the above entitled causes had been procured by the plaintiff by corrupting a former judge of this court. The *amici* stated that they no longer represented the defendant, which, following the judgments of this tribunal, had executed an agreement of settlement with the plaintiff, but appeared on behalf of certain other interests adversely affected by the judgments. We stated that if the movants filed a petition as *amici curiæ* embracing the allegations made by them, we would proceed in the premises as seemed warranted. A petition was presented. By an order entered November 26, 1941 the court appointed a master to hear the evidence and in effect directed the *amici* to proceed with the case.

An answer[2] was filed by the plaintiff. Hearings before the master began in June, 1941, and continued through April, 1943. The transcript of the proceedings, with exhibits, consists of more than thirty-five hundred printed pages. The *amici* or attorneys associated with them were compelled to make trips to Philadelphia, to New York, to Cleveland, to Battle Creek and to various points in Florida in order to interview numerous witnesses, to appear before the master and for various other purposes. After testimony was concluded, the *amici* argued the case before the master and prepared and filed briefs and requests for findings of fact and conclusions of law. The master found in favor of

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[2]The plaintiff's answer did not oppose vacating the judgments but did deny exercising any corrupting influence on the court. Counsel for the plaintiff offered to argue the cases *de novo* before us and stated that the plaintiff would abide by the results of our decision. Jurisdiction, however, may not be conferred by consent, and if no corruption had been practiced this court would not have possessed the power to reopen its judgments or to recall its mandates after the end of the term.

the *amici* on the fundamental issue. Exceptions to the master's report were filed and *amici* prepared and filed a brief in this court. This consisted of over three hundred printed pages. The argument before this court consumed two days. After consideration we entered an order approving the master's report, set aside the judgments and recalled our mandates. Excluding from their respective computations all time expended by the *amici* and their office associates prior to the date of our order appointing the master, it appears that the *amici* and those associated with them expended a total of over nine thousand hours in the preparation, trial and argument of the case. The *amici* themselves expended approximately five thousand hours of work following the entry of the order of this court of November 26, 1941.

No agreement was made in advance of the completion of the work, nor could any be made, settling the compensation of the *amici*. What should their compensation be? As was said in In re Osofsky, 50 F. (2nd) 925, 927, by Judge Woolsey, "The elements to be considered in determining an attorney's fee were once most aptly summarized in evidence given on a reference by Honorable William G. Shoate, formerly a judge of this court, and David B. Ogden, Esq., a well known lawyer of a generation ago.

"They laid down the following elements as being matters properly to be considered when the fees of an attorney have not been agreed on beforehand, but are to be fixed: (1) The time which has fairly and properly to be used in dealing with the case; because this represents the amount of work necessary. (2) The quality of skill which the situation facing the attorney demanded. (3) The skill employed in meeting that situation. (4) The

amount involved; because that determines the risk of the client and the commensurate responsibility of the lawyer. (5) The result of the case, because that determines the real benefit to the client. (6) The eminence of the lawyer at the bar, or in the specialty in which he may be practicing."

As was pointed out by Judge Woolsey, each case differs to some extent in respect to the importance of the several elements referred to.

The members of the court are agreed that the court has power to award the compensation for their services to the court, to be paid by the plaintiff, and that under the circumstances of this case the *amici* are entitled to be awarded reasonable compensation for those services. Our difference of opinion lies in the question as to what is reasonable.

Using the criteria referred to in the Osofsky case, we find that the movants and their two associates expended a total of nearly two years' working time on the case. The work required a high degree of skill and they employed it in presenting the necessary degree of proof and in the preparation and presentation of their arguments and briefs. Though the nature of some of the proof had been disclosed in part in previous criminal proceedings, this by no means solved the problems of evidence presented. Insofar as this court was concerned two matters of transcendental importance were involved, the honor of the court and the purity of its judicial processes. The *amici* aided the court in purging itself of two judgments affected with corruption. Without the services of the *amici* the judgments would stand today. The *amici* are members of the patent bar, eminent in their profession. Under all the circumstances we conclude that the sum of $100,000 suggested by them as the amount of their compensation is reasonable.

Accordingly *amici* and their associates will be allowed the sum of $100,000 as their reasonable compensation and the amount of $54,606.57 as reimbursement for their out-of-pocket expenses. The court will deduct from the sum sought for reimbursement the amounts shown upon Exhibits A, B and C to the motion, which total $1,361.41, comprised of items representing expenditures made by the *amici* prior to the date of the order appointing the master.

Jones, *Circuit Judge*, dissenting:

I am compelled to dissent with respect to the amount of compensation allowed by the court to the *amici curiæ* for their professional services in connection with the proceedings which terminated in the vacation of this court's judgments of June 26, 1935, in the above entitled causes. I do not question the power of the court to award the *amici* compensation at the expense of the adverse litigant. Nor do I say that they are not entitled to some compensation. But, I do insist that their services are not to be evaluated on the basis of the time and effort expended and the results obtained at a rate of pay which they might charge and have a reasonable right to expect from private clients for comparable services.

The *amici* themselves asked us to create their status as such in these cases. Having thus volunteered to bring the subject matter officially to our attention for our appropriate action (after the underlying fault of the impeached judgments had been disclosed by official investigations and court trials to which the *amici* were not party), it is not a little surprising to me that they should now presume to ask of

us an award of compensation on the basis of the value of their services to clients interested in the private aspects of the litigation.

The fact that Universal, against which the fees are to be charged, perpetrated a fraud on this court in obtaining its earlier judgments is immaterial to our present problem. These proceedings do not call for the imposition of penal sanctions and, particularly, not for the pecuniary benefit of counsel who participated therein as friends of the court. Our question is as to how much a court may in good conscience award to *amici* for their services to the court and not what those services would be worth to private clients. As members of the bar of this court, the *amici* can have little less interest than the court itself in purging its records of wrongs,—an obligation which these *amici,* being highly reputable counsel, must have well understood when they proffered their services. They are to be thought of as having primarily acted *pro bono publico* of their own volition. In no event, can it be said that the court independently imposed upon them a wholly unfamiliar task.

But, we did independently choose and appoint a Master to conduct the proceedings and to make findings and recommendations to the court. The Master discharged the duties of his office with marked ability. After lengthy hearings and a careful and painstaking study of the evidence and the pertinent law, the Master prepared and filed a complete report upon which this court was able to act finally without taking further testimony or making any additional findings. For all of that service, which certainly consumed as much of the Master's valuable time and effort as the *amici* could justifiably have spent on the case, we awarded the Master a fee of twenty-five thousand dollars which, by the

way, was his own suggestion as to just compensation for his services. I have seen nothing that would prompt me to conclude that these *amici* are entitled to any greater sum for their services to the court.

Judge Maris has authorized me to state that he joins in this dissent.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

Nos. 5546 and 5648

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

Before BIGGS, MARIS, JONES, GOODRICH AND MCLAUGHLIN, *Circuit Judges.*

ORDER

AND NOW, to wit, this 29th day of December, 1944, it is

ORDERED that J. Bernhard Thiess and Thorley Von Holst, Esquires, *amici curiae,* be and they hereby are allowed the sum of $100,000 as compensation for their services in the above entitled cause; and it is

FURTHER ORDERED that the expenses of the *amici curiae,* as shown by the exhibits to their motion filed herein on July 26, 1944, be and they hereby are allowed in the sum of $54,606.57 (viz.: the total of the sums shown upon Ex-

hibits A, B and C to the motion, less amounts totalling $1,361.41, comprised of items under dates of May, June and August, 1941); and it is

FURTHER ORDERED, that the sum of $154,606.57 be and the same hereby is taxed against Universal Oil Products Company together with the costs of the proceedings in this Court to set aside the judgments rendered by this Court in the above entitled causes on June 26, 1935.

For the Court

(sgd.) JOHN BIGGS, JR.
United States Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

Nos. 5546 and 5648.

ROOT REFINING COMPANY,
Defendant-Appellant,

v.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

ORDER.

Present: BIGGS, MARIS, GOODRICH and MCLAUGHLIN, *Circuit Judges.*

AND NOW to wit this 19th day of February, 1945

IT IS ORDERED that the printed opinion filed herein on December 29, 1944 be and the same hereby is amended by inserting the word "*amici*" between the word "the" and the word "compensation" in the second line of the fourth paragraph on page 3.

By THE COURT,

BIGGS,
U. S. Circuit Judge.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 48

ORDER ALLOWING CERTIORARI—Filed April 23, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 64

ORDER ALLOWING CERTIORARI—Filed April 23, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration or decision of this application.